

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

GENE WINDHAM and LILLIE MAE WINDHAM,

Plaintiffs,

VS.

CASE NUMBER 2:08CV007-MHT

HUDDLE HOUSE, INC., GWYNNE STRAUGHN, et al.,

Defendants.

**MOTION BY DEFENDANT HUDDLE HOUSE, INC., PURSUANT TO RULE 4(m)
OF THE FEDERAL RULES OF CIVIL PROCEDURE TO DISMISS CLAIMS AGAINST
UNSERVED DEFENDANT STRAUGHN**

Comes now Defendant Huddle House, Inc., and moves the Court as follows:

To dismiss from the instant cause of action all claims against the unserved defendant identified as Gwynne Straughn, as the above-styled cause has been pending for 398 days without successful service of process upon this defendant; further, 392 days have elapsed since the failure of the plaintiffs' effort at service of a summons and complaint upon Defendant Straughn, and on information and belief no further effort at service of a summons and complaint upon defendant Straughn has been made by plaintiffs.

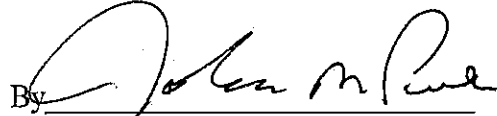
Federal Rule of Civil Procedure Rule 4(m) provides for a time limit for service as follows:

If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

Wherefore, the premises considered, defendant Huddle House, Inc., moves this Court to dismiss the claims herein against defendant Straughn, no good cause having been shown heretofore for the failure of service. Please note that the undersigned counsel does not intend for this motion to be construed as any appearance in behalf of the unserved defendant.

Respectfully submitted,

JOHN M PEEK, P. C.

By 

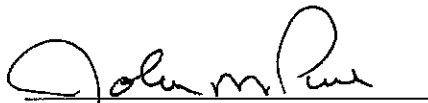
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Attorney for Defendant Huddle House, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the above and foregoing on all counsel of record for the parties by electronic filing and/or by placing a copy of same in the United States mail, postage prepaid and addressed to their regular mailing address as follows:

Thomas B. Albritton
Albrittons, Clifton, Alverson, Moody & Bowden
109 Opp Avenue
Post Office Drawer 880
Andalusia, AL 36420

February 4, 2008.


John M Peek